

EXHIBIT E



Planet Depos®
We Make It *Happen™*

Transcript of Gary Haycox

Date: July 7, 2022

Case: XR Communications, LLC -v- D-Link Systems, Inc., et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

9708

Transcript of Gary Haycox

1 (1 to 4)

Conducted on July 7, 2022

1	IN THE UNITED STATES DISTRICT COURT	1	A P P E A R A N C E S
2	FOR THE CENTRAL DISTRICT OF CALIFORNIA	2	
3	LOS ANGELES DIVISION	3	
4	-----X	4	ON BEHALF OF PLAINTIFFS:
5	XR COMMUNICATIONS LLC d/b/a :	5	PHILIP X. WANG, ESQUIRE
6	VIVATO TECHNOLOGIES, :	6	RUSS AUGUST & KABAT
7	Plaintiffs, :	7	12424 Wilshire Boulevard
8	v. :Civil Action No:	8	12th Floor
9	:8:17-CV-00596	9	Los Angeles, California 90025
10	D-LINK SYSTEMS, INC., :	10	310.826.7474
11	Defendants. :	11	
12	-----X	12	
13	DEPOSITION OF GARY HAYCOX	13	ON BEHALF OF DEFENDANT - ARUBA NETWORKS:
14	APPEARING REMOTELY FROM BEAVERTON, OREGON	14	ROBERT T. HASLAM, ESQUIRE
15	THURSDAY, JULY 7, 2022	15	KEE YOUNG LEE, ESQUIRE
16	5:00 P.M.	16	COVINGTON & BURLING LLP
17		17	3000 El Camino Real
18		18	5 Palo Alto Square - 10th Floor
19		19	Palo Alto, California 94306
20		20	650.632.4700
21		21	
22		22	
23	Job No.: 455085	23	
24	Pages 1 - 86	24	
25	Reported by: Adrienne Mignano, RPR	25	
1	Deposition of GARY HAYCOX, held via Zoom	1	A P P E A R A N C E S (Continued)
2	videoconferencing, pursuant to Notice, before Adrienne	2	
3	M. Mignano, a Notary Public and Registered	3	
4	Professional Reporter in and for the State of New	4	ON BEHALF OF DEFENDANT - NETGEAR & FALCON
5	York.	5	JENNIFER FORTE, ESQUIRE
6		6	DUANE MORRIS LLP
7		7	1540 Broadway
8		8	New York, New York 10036
9		9	212.471.4772
10		10	
11		11	ALSO PRESENT:
12		12	Anna Prusko
13		13	Drew Halton - Videographer
14		14	Malcolm Cooke - Remote Technician
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

5		7	
1	C O N T E N T S	1	Would the reporter please swear in
2		2	the witness.
3	EXAMINATION OF GARY HAYCOX PAGE	3	Whereupon,
4	By Mr. Haslam 7	4	GARY HAYCOX,
5		5	being first duly sworn or affirmed to testify to
6	E X H I B I T S	6	the truth, the whole truth, and nothing but the
7	(Attached to the transcript)	7	truth, was examined and testified as follows:
8	HAYCOX DEPOSITION EXHIBITS PAGE	8	EXAMINATION BY COUNSEL FOR DEFENDANT - ARUBA
9	Exhibit 1 Catcher Holdings 8-K 18	9	NETWORKS
10	Exhibit 2 Prospectus 27	10	BY MR. HASLAM:
11	Exhibit 3 Business Loan Agreement 30	11	Q Good afternoon, Mr. Haycox. Can you
12	Exhibit 4 Commercial Security Agreement 73	12	tell us where you reside?
13		13	You're muted.
14		14	A Good afternoon.
15		15	Q Good afternoon. Can you tell us --
16		16	(Pause in proceedings.)
17		17	Q Mr. Haycox, can you tell us where you
18		18	currently reside?
19		19	A Yeah. I currently reside in
20		20	Beaverton, Oregon.
21		21	Q Have you ever had your deposition
22		22	taken before?
23		23	A Yes, I have.
24		24	Q Okay. Then you're somewhat familiar.
25		25	I will ask you questions and you can answer them
1	THE VIDEOGRAPHER: Here begins Disk	1	to the best of your ability. If you don't
2	Number 1 in the video deposition of Gary Haycox	2	understand a question, let me know and I'll try
3	in the matter of XR Communications, LLC d/b/a	3	to rephrase it. I'm going to be primarily
4	Vivato Technologies versus D-Link Systems, Inc.,	4	covering events from 2006 to the end of 2008 and
5	in the U.S. District Court, Central District of	5	into 2009, so I know I'm going back some ways.
6	California; Civil Action Number:	6	I do have documents that I think will help us as
7	8:17-CV-00596-DOC.	7	we go along.
8	Today's date is July 7, 2022. Time	8	Did you form, at one point, a company
9	on the video monitor is 5:01 p.m. Eastern. The	9	called Wayout Wireless?
10	videographer is Drew Halton for Planet Depos.	10	A Wayout Wireless, I believe, was
11	All participants are attending remotely.	11	the -- it is a long ways back, but I believe
12	Would counsel please voice-identify	12	that was the initial company that we created,
13	themselves and state whom they represent.	13	but then it was formed into Vivato Networks.
14	MR. HASLAM: Bob Haslam, Covington &	14	Q And what did Wayout Wireless -- what
15	Burling, representing Aruba Networks. With me	15	was its business?
16	is Kee Young Lee.	16	A The business was more of a consulting
17	MS. FORTE: Jennifer Forte with Duane	17	and integration business, so working with
18	Morris representing Defendants Netgear and	18	wireless customers and doing implementations.
19	Falcon.	19	Q At some point, did Wayout Wireless
20	MR. WANG: Phillip Wang of the firm	20	acquire some assets and patent properties,
21	Russ, August & Kabat on behalf of Plaintiff XR.	21	patent applications and patents from a company
22	I am joined by my colleague, Anna Prusko, also	22	known as Vivato, Inc.?
23	of Russ, August & Kabat, on behalf of XR.	23	A Yes. We did an asset purchase and --
24	THE VIDEOGRAPHER: The court reporter	24	which included the patent portfolio.
25	is Adrienne Mignano representing Planet Depos.	25	MR. HASLAM: Can we pull up what was

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

<p>41</p> <p>1 on. We showed them the projects we were working 2 on. We showed them what the -- what items 3 that it -- expansions were happening. We had 4 rent of a facility up in Spokane. We had an 5 office in Beaverton. And we had employees, 6 payroll that was being paid and other 7 expenditures, so everything was being forwarded 8 into that management process. 9 Q Did Aequitas have at some point 10 during the term of the loan, or at least between 11 November of 2007 and February 2008, did they 12 have someone on premises to facilitate the 13 approval of the disbursements? 14 A No. They -- their offices were about 15 five miles from where we were at, so we spent a 16 great deal of time over at their offices, and I 17 never received -- even through the process of a 18 complaint that we filed later in this case. I 19 hadn't received any of the internal document 20 notes of the meetings that they had with regard 21 to our company, so anything that they had 22 discussed at the company that I wasn't there 23 participating in, I don't have any availability 24 to that. 25 Q Okay. Well, do you know whether</p>	<p>43</p> <p>1 how much Aequitas took the management on their 2 own. 3 Q Okay. But just to confirm, then, did 4 you, on occasion, have meetings with Aequitas to 5 discuss the spending of the loan proceeds? 6 A Yes, I had meetings with them. 7 Q Do you recall any specific meetings 8 or any specific types of disbursements that you 9 had discussions with Aequitas concerning their 10 funding those particular expenses? 11 A Again, the first few advances went 12 pretty smoothly because we were getting 13 disbursements for operations of the company. 14 Later on, they took a more, I should say, 15 hands-on or firm approach of not agreeing to 16 everything I was looking for them to do, so -- 17 which told me at the time that, you know, they 18 were basically in full control of the 19 disbursements. 20 And then I had to actually kind of 21 walk carefully on some of the things I was 22 working with them on and to get them to agree to 23 do some of the financing specifically in the 24 area of the projects that we had undergoing. So 25 we had some customers that were needing to be</p>
<p>42</p> <p>1 Mr. McCarthy had regular communications, either 2 meetings or phone calls, with anyone at Aequitas 3 during this -- the period of the loan -- 4 MR. WANG: Objection. Calls for 5 speculation. 6 Q -- that he met with? Let me rephrase 7 the question. 8 Do you know whether Mr. McCarthy had 9 meetings with or telephone calls with Aequitas 10 discussing what disbursements could be paid? 11 MR. WANG: Same objection. 12 Q You -- there is -- you can answer 13 subject to the objection. 14 A Dennis McCarthy was the CFO of 15 Catcher, was with that entity for some time up 16 to and through the merger process, and he was 17 the one that facilitated the -- you know, the 18 large part of the deal with the Catcher merger, 19 including the loan. He was aware of the loan as 20 well, the bridge note. And so back to the point 21 of speculation, I would assume that he was 22 constantly contacted with Aequitas. 23 Q Okay. 24 A But that is -- you know, you would 25 have to ask Dennis how often he talked to them,</p>	<p>44</p> <p>1 fulfilled, and we needed money, operational 2 expenses to deal with those. 3 There's also things like the rent for 4 the facilities up in Spokane. We can't let that 5 go stale. We had the patents and the patent 6 portfolio, as discussed to them in -- I think in 7 the agreement, that they needed to make sure 8 that this stayed enforced. And then we also had 9 an office in Portland that we ended up winding 10 down as part of the conversation, which is to 11 reduce spending. And then all of us at the top 12 were -- basically, stopped taking paychecks to 13 fund our employees that were doing the 14 operations on the customers. 15 Q At some point in either late 2007 or 16 early 2008, did you become aware that Mr. Brooks 17 began to raise the issue of the payment of his 18 bills for performing services and maintaining 19 the patent portfolio and prosecuting the patents 20 that Vivato Networks Holdings owned? 21 A Yes, and that was one of the meetings 22 I had, or maybe multiple meetings I had with 23 Aequitas. I told them, you know, that this -- 24 they perfected the note against the IP, and I 25 said that this -- they need to ensure that that</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

<p>45</p> <p>1 IP stays enforced. And so, at that point, I</p> <p>2 don't know if they actually spoke with Brooks or</p> <p>3 if they put it under their attorneys to -- you</p> <p>4 know, to keep the portfolio in place, but they</p> <p>5 basically had management responsibility under</p> <p>6 the contract, I believe, to ensure that that</p> <p>7 portfolio stayed up to date.</p> <p>8 Q Do you know whether Aequitas --</p> <p>9 MR. HASLAM: Well, strike that.</p> <p>10 Q Do you know whether Catcher was ever</p> <p>11 able to bring Mr. Brooks' payments current in</p> <p>12 2008?</p> <p>13 A In 2008?</p> <p>14 Q Yes.</p> <p>15 A I don't believe that that happened.</p> <p>16 Q Did Mr. Brooks ever have a</p> <p>17 conversation with you that if he -- if his bills</p> <p>18 were not brought current, he would have to</p> <p>19 withdraw from representing Vivato Networks or</p> <p>20 Catcher, whichever company he was performing</p> <p>21 services for?</p> <p>22 A Yeah, it was --</p> <p>23 MR. WANG: I'm sorry. Sorry.</p> <p>24 Objection to the extent it calls for</p> <p>25 attorney-client privilege. I don't believe any</p>	<p>47</p> <p>1 multiple times advising them on keeping the</p> <p>2 patent portfolio up to date and that the Brooks</p> <p>3 payment was due. And at that point, I said --</p> <p>4 went back in to the Aequitas team, and whether</p> <p>5 or not they were going to work with -- continue</p> <p>6 to work with Brooks or they are going to have</p> <p>7 their own attorneys pick up the portfolio was</p> <p>8 something that -- I assume that they were having</p> <p>9 those conversations, but I don't have any</p> <p>10 information that shows what really happened in</p> <p>11 there.</p> <p>12 Q But do you recall at some point</p> <p>13 becoming aware that Mr. Brooks was going to</p> <p>14 withdraw from representing Vivato Networks</p> <p>15 Holdings or Catcher with -- in the Patent Office</p> <p>16 with respect to the patent prosecution that was</p> <p>17 ongoing on the applications?</p> <p>18 A Yeah, that was -- again, that was</p> <p>19 part of the correspondence with the payment that</p> <p>20 was required, so that went into the management</p> <p>21 team. They had that information.</p> <p>22 Q And do you -- do you know that</p> <p>23 Mr. Brooks ultimately did withdraw from</p> <p>24 representing Vivato Networks Holdings, Inc. or</p> <p>25 Catcher Holdings at the Patent Office?</p>
<p>46</p> <p>1 privilege has been waived, so I wanted to note</p> <p>2 that issue that's come up in a couple</p> <p>3 depositions.</p> <p>4 MR. HASLAM: Well, I'll just state</p> <p>5 for the record that I don't think it has</p> <p>6 hindered us so far. I'm not sure that, given</p> <p>7 the company has gone out of business, a</p> <p>8 privilege remains, but I understand your</p> <p>9 objection. We are not going to resolve now.</p> <p>10 BY MR. HASLAM:</p> <p>11 Q So subject to that objection, you can</p> <p>12 answer the question.</p> <p>13 A Okay. I believe the -- any</p> <p>14 correspondence that came from Brooks went into</p> <p>15 the entity and it was presented, you know, as an</p> <p>16 expenditure to Catcher at the time because a</p> <p>17 merger completed, and so that would have been</p> <p>18 forwarded on to the team that was actually</p> <p>19 looking at the expenditures that were going out.</p> <p>20 Q Do you recall that Aequitas -- do you</p> <p>21 recall personally that Aequitas refused to agree</p> <p>22 to bring -- to make payments to bring</p> <p>23 Mr. Brooks' account current?</p> <p>24 A I don't recall them ever saying they</p> <p>25 were not going to do it. I recall me on</p>	<p>48</p> <p>1 A Yeah, I'm not sure at the time if I</p> <p>2 was aware, but I was made aware of it in -- just</p> <p>3 recently, so I know that he was making that</p> <p>4 request for payment, and that was forwarded on</p> <p>5 into the Aequitas team. And, again, I --</p> <p>6 because a lot of information that wasn't being</p> <p>7 given to me at the time, I didn't know if they</p> <p>8 had moved it to an internal -- their internal</p> <p>9 attorneys to manage that portfolio or if they</p> <p>10 were -- continued to work with Brooks.</p> <p>11 Q Do you recall becoming informed at</p> <p>12 some point that patent applications went</p> <p>13 abandoned because there was no attorney</p> <p>14 registered to act on behalf of Vivato Networks</p> <p>15 Holdings, Inc. or Catcher at the Patent Office?</p> <p>16 MR. WANG: Objection to form.</p> <p>17 Q You can answer the question to the</p> <p>18 extent you can.</p> <p>19 A I don't recall. I don't recall what</p> <p>20 happened in that transition process. I know at</p> <p>21 some point Aequitas went dark with me after</p> <p>22 they -- you know, after they secured the IP</p> <p>23 portfolio and they were going to manage selling</p> <p>24 that portfolio.</p> <p>25 There was a period of time in the</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

<p>49</p> <p>1 beginning of that process -- I don't recall what 2 month it was, but it was in 2008, at some point, 3 I had a call with Aequitas, and I don't recall 4 the entity or entities. Might have been a 5 consultant that they had on at the time to go 6 out and try and sell the patent portfolio. And 7 I provided them input as far as the knowledge I 8 had about the patents, which I'm not the 9 inventor, nor am I the patent author, so I gave 10 them as much as I could, and then, at that 11 point, they pretty much disappeared. 12 So I assume at that point when I was 13 talking with them -- I would make the assumption 14 that since they are trying to sell the patents 15 that they had them up in -- up to date. 16 Q Did you ever have any reason to 17 believe that Catcher -- that Aequitas -- I 18 apologize. 19 Did you ever have reason to believe 20 that Aequitas, because they had a lead on the 21 portfolio, was refusing to pay Brooks' billings 22 in order to cause a default so that Aequitas 23 could ultimately take possession of the 24 portfolio? 25 A I wish I knew I had that information.</p>	<p>51</p> <p>1 A Yeah. 2 Q You told Aequitas that they needed to 3 keep the IP portfolio current, correct? 4 A That's correct. 5 Q Did they ever tell you that they 6 would do so? Did they ever affirmatively state 7 that they would do so? 8 A I think they -- it was just part of 9 the process that we -- you know, we will get the 10 funds allocated. I don't recall, in person, 11 them ever telling me that they were -- they did 12 it, they were going to do it. But if I 13 recall -- if I recall that they had that 14 responsibility in the contract of perfecting and 15 acquiring the patents. 16 Q Under the merger -- I will just 17 represent we can look at it. Under the merger 18 in the documentation, Catcher Holdings had the 19 responsibility for maintaining and prosecuting 20 patents. 21 And with that -- with that 22 representation, is it your recollection that 23 part of the reason that you were talking to 24 Aequitas about Mr. Brooks and his bills and 25 maintaining the portfolio because Catcher</p>
<p>50</p> <p>1 That would have been part of my complaint. No, 2 sir. 3 Q Okay. But what you do clearly recall 4 is, is that you -- that the bills from 5 Mr. Brooks were forwarded to Aequitas, correct? 6 A I believe all the expenditures were 7 being forwarded in to them. They were managing 8 the control of funds for all the expenditures. 9 And I do recall informing them directly in 10 meetings. 11 Q Okay. And you -- do you recall 12 informing Aequitas that if Mr. Brooks withdrew 13 as counsel that they would need to appoint 14 somebody to continue handling the IP portfolio 15 at Vivato Networks Holdings, Inc., correct? 16 A I informed them I was informing them 17 to keep the patent portfolio enforced. The 18 method to which they were going to do that, I 19 don't have any insight to that. 20 Q Did they assure you that they would 21 do so, or did -- was your statement that they 22 needed to keep the portfolio in shape met with 23 silence? 24 MR. HASLAM: Let me withdraw it. 25 Q That is a bad question.</p>	<p>52</p> <p>1 Holdings had the responsibility for prosecuting 2 the patents? 3 A My -- the -- I am not sure where -- 4 if Catcher Holdings has that, but my -- what was 5 in my mind at the time was they actually 6 perfected control over the IP as collateral, and 7 once they, basically, foreclosed and pulled up 8 that collateral, that would be their 9 responsibility. But, in the end, I was 10 thinking, since that is a piece of collateral 11 that they see as value for the loan, that they 12 would keep that patent portfolio in place. I 13 reminded them on a couple occasions that they 14 needed to do that. Any specific yes, noes to 15 me, I don't recall those conversations. 16 Q And it is your recollection that the 17 payment of expenses by Vivato Networks Holdings 18 or Catcher Holdings, Inc. in 2008, including any 19 payments to Mr. Brooks for his services 20 prosecuting the patents or patent applications, 21 had to be approved by Aequitas; is that correct? 22 A At the time, pretty much everything, 23 especially later advances into the 2 -- you said 24 "2008," so those are later advances. As we 25 transitioned into 2008, it became very heavy</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

<p>53</p> <p>1 management on the funds.</p> <p>2 Q Okay.</p> <p>3 MR. HASLAM: Can we have Brooks -- I</p> <p>4 think it is Brooks 7 brought up.</p> <p>5 Q This is an April 28, 2008 filing with</p> <p>6 the United States Patent and Trademark Office,</p> <p>7 and it is a request by Mr. Brooks to withdraw as</p> <p>8 counsel in connection with this particular</p> <p>9 application. And I will --</p> <p>10 MR. HASLAM: Can you give control to</p> <p>11 the witness.</p> <p>12 Q It is a reasonably short document. I</p> <p>13 would like you to look at it. I am going to ask</p> <p>14 you if you recall seeing it.</p> <p>15 (Witness reviewing document.)</p> <p>16 A So repeat -- I was just reading the</p> <p>17 document. Can you repeat the question, please.</p> <p>18 Q I think it is a little more further</p> <p>19 down.</p> <p>20 A Yep.</p> <p>21 Q And on the page you're on, you see</p> <p>22 that Mr. Brooks -- this is dated April 25,</p> <p>23 2008 -- indicates that the firm or individual</p> <p>24 for future correspondence is Christopher R.</p> <p>25 Ambrose.</p>	<p>55</p> <p>1 Mr. Brooks was actually withdrawing as counsel,</p> <p>2 in any of the meetings that you had with</p> <p>3 Aequitas, did you inform them orally that they</p> <p>4 needed to do something because Mr. Brooks was</p> <p>5 withdrawing and there would be no counsel in</p> <p>6 front of the patent to represent those -- that</p> <p>7 portfolio in the Patent Office?</p> <p>8 MR. WANG: Objection to form.</p> <p>9 Q You can answer the question.</p> <p>10 A I believe -- timing is going to be</p> <p>11 hard for me here. Before this occurred, when</p> <p>12 bills were coming in, they were presented to</p> <p>13 Aequitas with the -- and with my recommendation</p> <p>14 to them, that they need to keep this patent</p> <p>15 portfolio in place, that they are basically</p> <p>16 controlling the funds, they are controlling the</p> <p>17 collateral, they are the collateral agent, that</p> <p>18 they need to keep this patent portfolio in place</p> <p>19 and as part of the -- part of the management</p> <p>20 services they were providing. They were the</p> <p>21 collateral agent, they were holding the</p> <p>22 collateral.</p> <p>23 Q My question is: Once you became</p> <p>24 aware that Mr. Brooks was actually taking steps</p> <p>25 to withdraw from representation, did you at</p>
<p>54</p> <p>1 Do you recall becoming aware in April</p> <p>2 of 2008 that Mr. Brooks was actually taking</p> <p>3 steps to withdraw as prosecution counsel for the</p> <p>4 patent portfolio owned by Vivato Networks</p> <p>5 Holdings, Inc.?</p> <p>6 A Yeah, I'm sure this is -- I am sure</p> <p>7 this is a document I received and then -- or</p> <p>8 seen. I don't know if I received it. It would</p> <p>9 have went over to Aequitas.</p> <p>10 Q So you recall -- whether you saw this</p> <p>11 document or not, do you recall becoming aware in</p> <p>12 the spring of 2008 that Mr. Brooks was actually</p> <p>13 withdrawing as counsel for Vivato Networks</p> <p>14 Holdings, Inc. at the Patent Office for</p> <p>15 maintaining the portfolio?</p> <p>16 A According to this document, yes.</p> <p>17 Q And you passed that on to -- you</p> <p>18 passed that information on to Aequitas?</p> <p>19 A Yes. Aequitas was getting all the</p> <p>20 correspondence, I believe.</p> <p>21 Q Well, this particular communication</p> <p>22 filed with the Patent Office -- put it this way:</p> <p>23 I don't know one way or the other whether this</p> <p>24 document ever found its way to Aequitas. What</p> <p>25 I'm asking you is: Once you became aware that</p>	<p>56</p> <p>1 least inform Aequitas of that fact?</p> <p>2 A Specifically, I don't recall. I</p> <p>3 think it is just part of the process of the</p> <p>4 discussions I had with them on the portfolio.</p> <p>5 So since the -- I assume if they got this</p> <p>6 document, it was directed over -- all the</p> <p>7 documents were being directed to their offices,</p> <p>8 the Vivato information that, under the merger,</p> <p>9 was directed to the Aequitas offices, that they</p> <p>10 would have seen this.</p> <p>11 Q Okay. And I understand your</p> <p>12 testimony about that they would have seen this,</p> <p>13 but I'm asking, independent of that, do you</p> <p>14 recall having any discussions with them about</p> <p>15 the fact that Mr. Brooks was no longer</p> <p>16 complaining about bringing his bills current,</p> <p>17 but he was actually taking steps to withdraw</p> <p>18 from representing Vivato Networks Holdings, Inc.</p> <p>19 at the Patent Office?</p> <p>20 MR. WANG: Objection. Form.</p> <p>21 Q You may answer.</p> <p>22 A Yeah, I don't -- I don't recall a</p> <p>23 specific discussion pertaining to this item. I</p> <p>24 discussed -- I recall the collection of what</p> <p>25 needed to be done to keep this patent portfolio</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

<p>57</p> <p>1 in place. Again, they got -- the communications 2 went pretty bad, stale, with them, and so where 3 their attorneys were picking this up for -- they 4 didn't tell me. They were not informing me as 5 to how they were managing the patent portfolio. 6 Q In the Request to Withdraw, 7 Mr. Brooks indicates as the reason for 8 withdrawing that Mr. Brooks and Vivato Networks 9 Holdings, LLC have been unable to reach a 10 mutually agreeable understanding of payment of 11 service. 12 Do you recall, at some point, 13 Mr. Brooks informing you that he was going to 14 have to take the step of withdrawing as counsel 15 because he wasn't being paid? 16 A I don't recall a phone call, but I 17 believe in the invoices that were coming in, 18 that was a bottom-line next step. And, again, 19 that's why as I -- when I informed Aquitas that 20 they needed to ensure that this patent portfolio 21 stays enforced, how they were going to 22 accomplish that, I did not -- I was not privy to 23 that from Aquitas. 24 Q And we -- with Mr. Brooks' bills 25 coming in, were you aware that while he was</p>	<p>59</p> <p>1 the patent portfolio, but because of the things 2 that happened in the merger process, the fact 3 that we had the loan they put in place that 4 collateralized it, that deal lapsed. 5 Q Do you recall -- sorry. 6 A And then after -- okay, I was going 7 to say, then after -- subsequent to that, 8 Aquitas then secured the IP. They told -- you 9 know, again, they informed me that they were 10 working to sell the portfolio. There was a lot 11 of contention during the Intellectual Venture 12 process because I told them that this -- here is 13 your -- here is your best and -- best customer 14 you have to date is that one. Western had 15 senior position in the collateralization of 16 that -- of securement of that collateral. And I 17 said that's the deal you should be pursuing. 18 Well, they -- that ended up falling to the 19 wayside, and there is a lot of contention there. 20 They then told me that they were 21 going to move on and move the -- try to sell the 22 patent portfolio again to another -- to a 23 different entity. They didn't have one in place 24 at the time. I had a conversation with them on 25 the phone. Like I said, it was either with a</p>
<p>58</p> <p>1 get -- perhaps receiving some payments, he was 2 not being paid in full on his invoices, or was 3 that something that Mr. McCarthy or someone else 4 at the company would have been more directly 5 responsible for? 6 A Yeah, it is either Dennis or somebody 7 at Aquitas who was managing payments that were 8 going out. I wasn't aware. I am not aware if 9 they made a payment to it or not, other than, 10 you know, you said the correspondence saying it 11 wasn't being paid. 12 So, again, I went back to Aquitas 13 and told them the importance of keeping this 14 patent portfolio. They either -- again, I don't 15 know what they were doing at the time to keep 16 this portfolio enforced other than they were 17 marketing it, so my assumption was that they 18 were keeping it enforced. 19 Q When you say "they were marketing 20 it," my understanding is, at one point in 2008, 21 there was an agreement, at least in principle, 22 to sell the portfolio. Do you recall that? 23 A We had a -- we had an agreement with, 24 you know, that -- Intellectual Ventures during 25 the merger process of negotiating and selling</p>	<p>60</p> <p>1 consultant or with the people that were looking 2 to buy it just to describe what the patents are, 3 what I felt it was -- what the technical aspects 4 of it were and how they were being used in 5 Vivato products, then everything went dark. 6 Q And were the conversations on the 7 second -- the second go-round that you just 8 testified to, was that sometime in 2008? 9 A Yes. That would have been last -- 10 either third or fourth quarter 2008. 11 Q And given what we're looking at here 12 that Mr. Brooks requested to withdraw in April, 13 were those -- was that conversation about in 14 late 2008 after Mr. Brooks had filed his 15 Application to Withdraw? 16 A Yes, because you -- he -- withdrawal 17 was in April or May. 18 Q He filed the request in April. 19 A April, yeah. And so the 20 conversations for -- subsequent conversations 21 for moving the patent portfolio was in Q3 or Q4 22 of '08, so it would have been after that. 23 Q Mr. Ambrose testified at his 24 deposition that there was, at one time, a 25 discussion with a company called Vevi. Does</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

<p>61</p> <p>1 that ring a bell with you.</p> <p>2 A And can you spell that.</p> <p>3 Q I think he said it was perhaps</p> <p>4 V-E-V-E-Y. Does --</p> <p>5 A Yeah, I don't recall the name of the</p> <p>6 company.</p> <p>7 Q Okay. You mentioned earlier in some</p> <p>8 of your testimony about a lawsuit or some</p> <p>9 litigation. What were you referring to?</p> <p>10 A So when they went dark on selling the</p> <p>11 patent portfolio in 2008 or '9, I guess it</p> <p>12 was -- I can't recall the last conversation I</p> <p>13 had with Aequitas. I know we had a meeting</p> <p>14 subsequent to one of the calls we had with</p> <p>15 the -- I believe it was a consultant that was</p> <p>16 helping them move the portfolio.</p> <p>17 I had a meeting with the Aequitas</p> <p>18 folks. They basically told me that they were</p> <p>19 going to prioritize any payments in the patents</p> <p>20 sale to them over Western. And I said that's</p> <p>21 not how the agreement is in place. We have a</p> <p>22 proportional allocation of the funds, and any</p> <p>23 payments that come back in on a sale of proceeds</p> <p>24 you can't prioritize yourself. And then I</p> <p>25 didn't hear from them. So it is kind of --</p>	<p>63</p> <p>1 Aequitas went, like, now, I understand why. I</p> <p>2 wish I had a crystal ball.</p> <p>3 Q Were you aware that in 2008, 2009,</p> <p>4 there was litigation over Aequitas' attempts to</p> <p>5 foreclose on the collateral securing the loan?</p> <p>6 A No, I was never -- I was never</p> <p>7 informed of that, nor was I brought into it. It</p> <p>8 is -- well, I guess it's trivial. I guess it is</p> <p>9 who they were having problems with.</p> <p>10 Q Well, Mr. Ambrose testified that he,</p> <p>11 at least for a portion of time, represented the</p> <p>12 Vivato entities and one of the Catcher entities</p> <p>13 in some of that litigation, but you were never</p> <p>14 aware that there was a foreclosure action that</p> <p>15 ultimately led to Aequitas gaining ownership of</p> <p>16 the patent portfolio?</p> <p>17 A Oh, I -- oh, no, I'm aware of them</p> <p>18 closing and foreclosing on the collateral. I</p> <p>19 don't recall at the time and right now if there</p> <p>20 was a complaint against it. I may be -- a lot</p> <p>21 of things in my mind is kind of gone because it</p> <p>22 is -- of the loss of everything, but I thought</p> <p>23 it was just a legal process to foreclose on the</p> <p>24 collateral. I'm sure I wasn't happy about it,</p> <p>25 but, you know, it is --</p>
<p>62</p> <p>1 things went downhill fast in the early part of</p> <p>2 the year, and it obviously got pretty sour there</p> <p>3 on the last conversation with them.</p> <p>4 So then my brother -- so you asked</p> <p>5 who was participating -- he wanted to have a</p> <p>6 statement of zero value for his investment so he</p> <p>7 can do a tax-loss write-off. I contacted</p> <p>8 Aequitas and said hey, are -- what is the deal</p> <p>9 with the patent portfolio? Where is it at?</p> <p>10 What is -- and this is late. I mean, this is</p> <p>11 now in -- I don't even remember what year this</p> <p>12 was. 2010 or '11? I don't really recall, it's</p> <p>13 just been so long.</p> <p>14 I contacted them and asked them what</p> <p>15 the status of the portfolio was, where the --</p> <p>16 where they were at with it. And they go, Well,</p> <p>17 we sold that portfolio. I said, what? I said,</p> <p>18 how come I wasn't notified? How come I didn't</p> <p>19 see any proceeds from that? And then obviously</p> <p>20 it was, like, you know, come in and talk. And I</p> <p>21 started with the conversation. They weren't</p> <p>22 going to pay me, so then I had to retain an</p> <p>23 attorney to go after them on that.</p> <p>24 So it wasn't a smooth relationship</p> <p>25 with Aequitas. And as you can see where</p>	<p>64</p> <p>1 Q There was some litigation about it,</p> <p>2 but ultimately Aequitas, to your recollection,</p> <p>3 was able to foreclose on the collateral and</p> <p>4 obtain ownership of the patent portfolio?</p> <p>5 A Yes.</p> <p>6 Q Did it ever come to your attention</p> <p>7 that any of the patents applications -- patent</p> <p>8 applications that Mr. Brooks had been</p> <p>9 prosecuting went abandoned after Mr. Brooks</p> <p>10 withdrew and the Patent Office approved his</p> <p>11 withdrawal?</p> <p>12 A No.</p> <p>13 Q Do you know a -- or have any contact</p> <p>14 with a Mr. Carl Schwedler, a patent attorney</p> <p>15 with Bullivant, Houser, Bailey, P.C. in the</p> <p>16 2009-2010 time frame?</p> <p>17 A Is that a firm that was representing</p> <p>18 Aequitas?</p> <p>19 Q It is a firm -- it is an attorney who</p> <p>20 was a patent attorney in the 2009-2010 time</p> <p>21 frame.</p> <p>22 A In that 2009-2010 time frame, again,</p> <p>23 things got real quiet. So the end of 2008, we</p> <p>24 had the conversations to move the portfolio.</p> <p>25 That -- it may have been in 2009 and not 2008.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

<p>65</p> <p>1 You know, I -- I am kind of not sure on that. 2 But he may have been on the phone call when I 3 was relaying technical information about the 4 patents and how it was being applied to Vivato 5 and how -- and just in asking any technical 6 questions, knowing that I am -- I was not -- 7 like I told them, I am not the inventor, nor 8 do -- am I the patent author. I can just give 9 you the information I have based on my 10 understanding of how Vivato applied them. He 11 may have been on the call. I don't recall. 12 Q Do you recall any attorney who 13 informed you that he represented Aequitas in any 14 capacity calling you in the 2009-2010 time frame 15 and asking you what you knew about Mr. Brooks 16 withdrawing from representing Vivato Networks 17 Holdings at the Patent Office and what you knew 18 about why the patents that he had been 19 prosecuting went abandoned? 20 A No, I don't recall that. 21 Q Do you ever -- did you ever receive a 22 call from a Daniel P. Burke, a patent attorney 23 from Oyster Bay, New York representing 24 XR Communications, ever calling you and asking 25 you what information you had about Mr. Brooks'</p>	<p>67</p> <p>1 it would have been the same discussion. I don't 2 know where else it would have went. I don't 3 know. 4 Q I am just going to ask you about some 5 other names in the same question: Did any of 6 these people ever call you and ask you about the 7 circumstances surrounding why Mr. Brooks 8 withdrew or why the patents went abandoned? 9 Any conversations with an Adrian 10 Zajac, Z-A-J-A-C? 11 A Don't recall that name. 12 Q Any conversations with Adrian 13 Straplevi? 14 A Don't recall. 15 Q Any conversations with a Ron Chaffee? 16 A Don't recall. 17 Q Any conversations with Thomas Sidley? 18 A Tom Sidley was with Aequitas. 19 Q Did he ever call you in the 2009-2010 20 time frame to ask you about the circumstances 21 surrounding why Mr. Brooks withdrew and why the 22 patents went abandoned? 23 A In the -- he was managing the 24 portfolio, so the discussions I recall in -- 25 subsequent to the shutting down of the</p>
<p>66</p> <p>1 withdrawal from representing Vivato Networks 2 Holdings, Inc. at the Patent Office and the 3 abandonment of the patents that he had been 4 prosecuting after he withdrew? 5 A What time frame would that be? 6 Q 2009-2010. 7 A I really don't recall. 8 Q Did you ever have any conversations 9 with a Mr. Kai Hansen about the circumstances 10 surrounding why the patent portfolio that Vivato 11 Networks, Inc. possessed before the foreclosure, 12 why those patents had gone abandoned? 13 A What was the name again? 14 Q Kai Hansen, H-A-N-S-E-N. 15 A Where was he from? 16 Q Well, he is now affiliated with 17 XR Communications. 18 A I don't recall any conversations 19 about the patents going abandoned. And, again, 20 if there were, it would have been the same kind 21 of discussion I am having here, was that 22 Aequitas was a manager, the collateral manager, 23 and then became the ultimate owner of the 24 patents, and their responsibility for keeping 25 the patent portfolio enforced was on them. So</p>	<p>68</p> <p>1 company -- so whether it was 2008, 2009, I don't 2 really recall -- conversations I had with 3 Mr. Sidley was around selling the portfolio. I 4 don't recall any specific conversation as to the 5 state of the patents because at the time, again, 6 I -- they are contacting me to get technical 7 information, more specifics about the technology 8 and how it was used in the product itself, 9 Vivato product, and that they were actually 10 moving to sell the portfolio. So I had -- at 11 that point, my assumption is the portfolio is 12 still in place. We wouldn't be marketing 13 something that was -- has no value. 14 Q Was Mr. Sidley involved with Aequitas 15 and Catcher and Vivato in 2008 before the 16 company went down? 17 A Yeah. He was one of the primary 18 managers, like a program manager or lead in 19 Aequitas that managed through the whole process. 20 I don't have any information as to how much 21 Mr. Sidley was involved with Catcher in the 22 years before the process of bringing the 23 companies together, but he certainly was the key 24 person for managing through the merger process 25 up to operations of the company subsequent to</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

<p>69</p> <p>1 the merger process, and then also through the</p> <p>2 bridge-loan note and payments that were being</p> <p>3 drawn down off of that note.</p> <p>4 Q Was Mr. Sidley involved, to your</p> <p>5 knowledge, in any way with Aequitas relating to</p> <p>6 which expenses were getting paid and which ones</p> <p>7 were not?</p> <p>8 A I don't have specific information,</p> <p>9 but he is the one I would meet with when we were</p> <p>10 talking about the different dispersions.</p> <p>11 There's also other people within the company</p> <p>12 that would do some of the day-to-day management,</p> <p>13 so I assume that he had someone on staff that</p> <p>14 was taking care of it, but he was the one I</p> <p>15 would have conversations with about, you know,</p> <p>16 we need to keep this thing up and running, we've</p> <p>17 got to keep these patent portfolios enforced,</p> <p>18 how is the loan going? You know, that was</p> <p>19 probably the biggest conversation we had most of</p> <p>20 the time, was how are we doing on the financing?</p> <p>21 I would give him updates on what we</p> <p>22 were doing with the customers. We had a -- we</p> <p>23 had a big project that was underway that we</p> <p>24 ultimately had to let go because the company was</p> <p>25 winding down, which was unfortunate. So a lot</p>	<p>71</p> <p>1 taking it forward, having conversations with</p> <p>2 people that are consulting on moving the product</p> <p>3 out of the -- going forward, that that was being</p> <p>4 taken care of.</p> <p>5 Q If I can beg your indulgence, I think</p> <p>6 I am done, but I would like to take five minutes</p> <p>7 just to review my notes. Is that okay with you?</p> <p>8 A Sure.</p> <p>9 Q Okay.</p> <p>10 MR. HASLAM: Why don't we go off the</p> <p>11 record for five minutes.</p> <p>12 THE VIDEOGRAPHER: Off record, 6:37.</p> <p>13 (A recess was taken.)</p> <p>14 THE VIDEOGRAPHER: On record, 6:41.</p> <p>15 MR. HASLAM: Can we pull up Tab 42.</p> <p>16 REMOTE TECH: Stand by.</p> <p>17 MR. WANG: Can you provide a copy in</p> <p>18 the chat, please.</p> <p>19 REMOTE TECH: Yes. It's currently</p> <p>20 uploading. It is about halfway there.</p> <p>21 MR. HASLAM: Can you give control of</p> <p>22 this to Mr. Haycox.</p> <p>23 BY MR. HASLAM:</p> <p>24 Q I'll ask you to take a look at this</p> <p>25 document, and I'm going to ask you, number one,</p>
<p>70</p> <p>1 of what I was doing was on the operational side</p> <p>2 in that, and then, you know, present to them</p> <p>3 what needed to be paid out, and mainly it was</p> <p>4 done through -- the primary expenditures were</p> <p>5 with the payroll, but then we were also having</p> <p>6 discussions about, you know, cutting the payroll</p> <p>7 for the execs, us, our team first, I think, in</p> <p>8 half, and then we went to no paycheck. So</p> <p>9 there's a lot of conversations in place about</p> <p>10 operational stuff, including all the</p> <p>11 expenditures.</p> <p>12 Q Just a few more questions.</p> <p>13 So Mr. Sidley -- you had</p> <p>14 conversations with Mr. Sidley about the</p> <p>15 non-payment of Mr. Brooks and the need to keep</p> <p>16 the portfolio going; is that correct?</p> <p>17 A Yes. I -- Tom, Mr. Sidley, would be</p> <p>18 aware of the fact that the portfolio needed to</p> <p>19 be enforced and that the -- Brooks was the ones</p> <p>20 that were in place for when we did the original</p> <p>21 patents. And where they took it from there, I</p> <p>22 don't know.</p> <p>23 Q Okay.</p> <p>24 A Again, I made the assumption that</p> <p>25 they are marketing the portfolio, they are</p>	<p>72</p> <p>1 if that is your signature and, number two, if</p> <p>2 you can tell me if this is the document that</p> <p>3 collateralized the patents, the patent</p> <p>4 portfolio, to secure the bridge loan from</p> <p>5 Aequitas.</p> <p>6 A Yes, that is my signature. And</p> <p>7 collateral -- they have a list of collateral.</p> <p>8 So, yes, this looks like it is the document that</p> <p>9 provides the list of collateral that secured the</p> <p>10 loan.</p> <p>11 Q Okay. And is it your understanding</p> <p>12 that when the loan went into default that</p> <p>13 Aequitas was able to foreclose on the</p> <p>14 collateral, which was the subject of this</p> <p>15 exhibit?</p> <p>16 A Yes.</p> <p>17 MR. HASLAM: Can I have that marked</p> <p>18 as the next exhibit in order to Mr. Haycox's</p> <p>19 deposition.</p> <p>20 REMOTE TECH: Sure. Sorry, does --</p> <p>21 are you still seeing the exhibit? It looks</p> <p>22 like --</p> <p>23 MR. HASLAM: Yes.</p> <p>24 REMOTE TECH: -- somehow it moved</p> <p>25 off. One moment. Let me just fix that.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM